



Published on *United States Bankruptcy Court* (<http://www.canb.uscourts.gov>)

[Home](#) > Memorandum of Decision Re: Student

Monday, November 13, 2000

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

DO NOT PUBLISH This case disposition has no value as precedent and is not intended for publication. Any publication, either in print or electronically, is contrary to the intent and wishes of the court.

In re

CARY L. HORN,

No. 00-10221

[Debtor](#) (s).

CARY L. HORN,

[Plaintiff](#) (s),

v.

A.P. No. 00-1081

CITIBANK, N.A. STUDENT LOAN, et al.,

[Defendant](#) (s).

---

## **Memorandum of Decision**

Debtor and plaintiff Cary L. Horn appears to be an intelligent and capable young man. He is 28 years old, single, and has his entire life before him. In this [adversary proceeding](#)<sup>i</sup>, he seeks to have about \$8,500.00 in student loans discharged on the basis of undue hardship. The loans are very recent, some of them coming due only a few months before the bankruptcy. Horn has never made a meaningful attempt to repay any of them. Horn claims hardship on two grounds: that he has a back injury as the result of a car accident, and that he is voluntarily assisting his step-mother in the care of his father, who has psychological problems. The court finds Horn's back condition irrelevant; he is clearly intelligent enough to earn a good living even with back problems. While Horn's care for his father is admirable, it is also entirely voluntary and could end tomorrow. For these reasons, this sort of parental care is generally not considered hardship for purposes of discharging student loans. See In re Coveney, 192 B.R. 140, 144 (Bkrtcy.W.D.Tex. 1996). A common element in cases where hardship is found is an over-all sense of hopelessness. See Coveney, 192 B.R. at 143n3 and accompanying text. In this case, Horn has the world at his feet. It is up to him to decide whether or not to make something of his life. Hardship is when the debtor has no choice. The court finds that Horn is capable of repaying the loan if he decides to improve himself. His present circumstances could change tomorrow. He has never made a good faith attempt to repay his student loans, and the ink is still wet on some of them. Horn has therefore proved *none* of the three elements of undue hardship under In re Pena, 155 F.3d 1108 (9<sup>th</sup> Cir. 1998). Judgment will accordingly be entered in favor of defendant Educational Credit Management Corporation. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052.

Dated: November 13, 2000

---

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)<sup>i</sup>

---

**Source URL (modified on 11/04/2014 - 1:16pm):**

<http://www.canb.uscourts.gov/judge/jaroslovsky/decision/memorandum-decision-re-student>